



HOSPITALITY ALERT

CALIFORNIA SUPREME COURT SETS HEARING DATE FOR BRINKER OVERTIME CASE - NOVEMBER 8, 2011

On October 4, 2011, the California Supreme Court announced that it would hear oral argument in the long-awaited and much-anticipated meal and rest break case, *Brinker Restaurant Corp. v. Superior Court*¹, on November 8, 2011.

The Issue in Brinker

The fundamental question before the California Supreme Court in *Brinker* is whether California employers must ensure that their employees take meal and rest breaks or, instead, must California employers merely make those breaks available, without policing whether employees actually take them.

This is, quite literally, a multi-million dollar question because it has been fueling California’s huge class action industry for the past several years. The California Supreme Court accepted the case in 2008, and it was fully briefed as of October 2009. But, for reasons that are still unclear, the California Supreme Court held the case for two years without granting oral argument...until now.

The Oral Argument

The California Supreme Court has placed the *Brinker* oral argument first-in-line on its San Francisco docket for November 8, 2011. That means that oral argument will start promptly at 9:00 a.m. at 350 McAllister Street, San Francisco, CA 94102. The Court expects a large media and public presence for this argument, so arrive early if you hope to get a courtroom seat.

¹ *Brinker Restaurant Corp. v. Superior Court* (Hohnbaum), 165 Cal. App. 4th 25 (2008), review granted, 85 Cal. Rptr. 3d 688 (2008), S166350/D049331.

Impact on California Employers

It’s too early to tell which way the Court will rule in *Brinker*. Once the California Supreme Court oral argument occurs, based on the tone of the hearing and the types of questions asked by the justices, we’ll have a pretty good idea which way the Court is leaning. But, still, nothing is final until the Court issues its decision, which is usually within 90 days of oral argument.

That means that California employers should have the formal, final answer by early February 2012. At that time, when the decision is announced, employers across California will need to evaluate their meal and rest break policies to ensure compliance with the *Brinker* decision, whatever it turns out to be.

Stay tuned! We’ll report back with final analysis and recommendations soon.

This publication is for informational purposes only. It is not intended to be, and should not be construed as, legal advice on any specific facts or circumstances. If you have questions about a particular situation, please consult knowledgeable legal counsel.

© 2011 Jeffrey S. Sloan
All rights reserved.

